

THE CONCEPT OF A FAIR TRIAL

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Abstract:

Fair trial is basically the norm of International Human Rights Law, which protects individual from arbitrary, unlawful and deprivation of some of the basic liberties, freedoms and rights such as right to life, movement, speech etc. The right to have a fair trial is guaranteed under various International Human Rights instruments¹. It's worth and importance can be judged from the point that despite of its extensive interpretations, recently, it has been put forward in the category of a Non- Derogable rights.² Some of the principles of the Universal Declaration of Human Rights 1948 were incorporated in the Constitution of Pakistan 1973, while no attention was given to the fair trial. The paper is an attempt to highlight the very basic standards for a fair trial, and how a trial observation mission should be prepared and carried out in practice. However, the paper does not look into the issue which may arise from the trials conducted in the military courts.

Key Words: Crime, Justice, Accused Person and Fair Trial.

Introduction

Think that you are in the Court room and you have no idea why. It will further confuse you when judge reads out the allegations against you for the crimes of which you are accused were even never considered illegal earlier, and is not provided in the prevailing legal system. Neither of your questions is answered and you feel not in the position to defend yourself, nor the legal counsel there to defend you. The situation becomes worst when at the time of witness hearing you don't know the language he speaks with no interpreter. During trial preceding it further disturbs you that it is the second setting, and the first one was made even

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in your absence. With the length of proceeding, you become clear on the point that everyone in the Court room is convinced on the allegations charged against you, and you are guessing what the possible punishment should be.

This example shows that such situation arises when the norms of a fair trial are violated. A fair trial right sometimes called “Fair Administration of Justice” is indeed the cornerstone of the democratic societies abided by the Rule of Law.

Fair trial is basically the norm of International Human Rights Law, which protects individual from arbitrary, unlawful and deprivation of some of the basic liberties, freedoms and rights such as right to life, movement speech etc. The right to have a fair trial is guaranteed under various International Human Rights instruments³. It's worth and importance can be judged from the point that despite of its extensive interpretations, recently, it has been put forward in in the category of a Non- Derogable rights.⁴

Some of the principles of the Universal Declaration of Human Rights 1948 were incorporated in the Constitution of Pakistan 1973, while no attention was given to the fair trial. However, in 2010 due to 18th amendment to the Constitution Article 10A Right to have a fair trial was added, which was fairly discussed in the context of Yousaf Raza Gillani case.⁵

There was a case in 1980 that advocates for the concept of Fair Trial. In 1980, Mr. G was killed by a Grenade; at that time Mr. T and his two brothers were suspects of a crime. There was no evidence to prove that Mr. T and his two brothers to be innocent. He never received the right to a fair trial and he and his two brothers were sentenced to prison. The police concluded that those three people killed Mr. G because of the complications at work. After a few years the brothers were free except for the Mr. T, unfortunately the police decided to sentence Mr. T to death before making the final conclusion, so only he was free. Not only Mr. T family was treated unfairly but also many people experience this every day in countries. When Mr. T was in prison, he said that he embraced revolutionary ideal because he believed that someday he

would be vindicated. Until now, Mr. T's brothers has received compensation but they didn't receive any apologies.⁶ Another case that also represents the disregard to a right to a fair trial was that Mr. J was arrested for inciting others to petition. When Mr. J was arrested, his wife tried to prove that he was innocent. After 23 years in prison, Mr. J was free because the police didn't find anything to criminate him. Then, the people procures had to compensate him 416 Million and apology to him publically.⁷ But this organization only apology to him at his residence, about the compensation, they always kept reschedule. Although, Mr. J had been proven as an innocent citizen, he was not reinstated because the police have seized all his documents.

It is very common among the communities as well as in every society of the world that civil as well as criminal disputes takes places, either between party and parties. Similarly, criminals and criminal minded people are there in every part of the world, the need is crime should be controlled. No criminal must escape the punishment. In civil as well as in criminal matters the judicial assessments and determinations is of the legal issue among the parties to the case and is termed as "Fair Trial." When any of the dispute is outside of the capacity of the parties to solve it, it is given in the safe hands of the judicial system, whereby firstly; the accused is find out and then trialled, for the purpose to assure the fair administration of justices, and to reach to the truth. We have two types of trial Civil and Criminal. Criminal trial ends either on guilt or acquittal, and the rest of the actions other than criminal comes under civil actions. The right to be fairly trialled is protected under Universal Declaration of Human Rights 1948 under its Article (10). Trial should be done in public, the people who trials a person should not be biased.

The concept of fair trial is very encompassing one, and what we need to be looking at is the different facets as such which includes the different aspects of fair trial. At the outside it will be very clear that the meaning and scope of this particular phrase (fair trial) is very difficult to face it, because it spreads across both the substantive as well as the procedural laws. Normally when we talk about Fair Trial we start with Due Process, especially because due process has been read into our Constitutional scheme as facet of right to life. This basically embodies all aspects of what we generally cover under the concept of Rule of Law, especially in

a democratic society. When we talk about Due Process, it's a concept essentially coming from United States, but which has got a world-wide recognition, and when we talk about Due Process in the context of Fair Trial, what we are looking at is the aspect of preserving the public confidence in the administration of justice. For this reason we need to recognise that Fair Trial has a universal recognition.

If we look at the aspect of Fair Trial across the Glob there are principles that are to be followed respective of the heinous nature of the crime it is applicable to all sorts of crimes. It is not just enough that some facets of fair trial are satisfied while some are not. It is also the fundamental principle of the modern Human Law, with regard to legality of offences, the Non-retroactivity of criminal law and also the aspect of subjective criminal responsibility that has to be observed.

There are many interest which are involve in the fair trial; the interest of the Accused, the Public (regaining trust in the system) and the Victim has to be taken care of in the sense of feeling that how the justice has been rendered and of course it is also necessary that those who has committed wrongs must be made answerable as such all these comes in the ambit of Fair Trial. That's why the courts has elaborated upon how fair trial is something which has a social impact there are communal need and there are some other strong factors that will cause hindrances in the management.

If we come to the definition of Fair Trial, it will become very difficult because there is no comprehensive and exhaustive definition to refer to a fair trial. It has to be dealing with infinite varieties of situations and what has to be kept in mind that there is a fact that it is something which maintain fairness to such a degree that no miscarriage of justice is resulting and I think that is what can define fair trial because in different situation it has different meanings. Not just in deferent situations, there are various instances where Fair Trial standards defers from country to country, it defers in the very same place in terms of history, it defers in terms of the legal system been followed the type of government, how far religion has a say in the administration of justice and of course there are various norms which are acceptable in the society.

One of the examples it has defined is the European experience, where this fair trial concept is considered as inter duty concept because the European Union has so many different systems which are in place and these are so complex that it is very difficult to single or persuasive concept of Fair Trial which is applicable. That is why the European Court has taken upon them that each country would be held to the fair trial standards that they can stay and appropriate to their system. and when we come to the adversarial system, there have a set of norm and what they would be held answerable for as whether those norms have been adequately complied with, and on the other hand when we talk about the inquisitorial system; the question would be whether the inquisitorial standard have been properly observed which basically may be totally different from what the adversary standards would be.

If we look at the international Documents of Fair Trial, it spread across almost all the documents to which we refer as to Human Rights documents.⁸We have many other documents which make reference of this concept of fair trial. When we consider the concept of fair trial especially in the particular background that we are in, we look at it from the point of view of an Adversarial Nature of Trial, being a system which has its roots in Common Law, and in an Adversarial system we generally see that the prosecution and defence both of them must have equal opportunity as such with regard to those issues which are under consideration in a decision making process, there should be an equality of arms between the prosecution and defence, in fact at one level you might better say that the defence is at a better position because the prosecution has been burdened with event with the requirement of disclosing those material which is favourable to the defence too, so it is not equal in that sense. That is because of the reason that the prosecution as such is not supposed to be looking for a conviction at all cost but to see that justice is done and that is what requires them of being playing fair.

The test that is generally referred to for the purpose of finding whether the fair trial has been complied with is to see whether any prejudice has been caused to the person in terms of compliance requirements both substantive law and procedural law. When we talk about fair trial in terms of procedure. We must understand that procedure is technicalities

and every single deviation in terms of technicalities may not have as such detrimental effect on the fair trial concept as such as there is the substantial compliance in terms of the law. Small mistake in procedure in terms of errors which are not substantial may not make a big difference in the justice process.

When we are talking about judging the question of prejudice, the courts must be acting with a broad vision and they must be looking in the substance of what is said and not just the technicalities, and the accused has received substantial fair trial is what the courts assessment should be. But then this is not losing the sight of the fact that procedure of course is something which ensures the rule of law, sustains in something which must have some role in the process.

As far as prejudice is concerned, it is very difficult for an ordinary person to give a particular definition or interpretation as such and that is why it has to be seen as what has happened right from the initial stage to the ultimate stage, how that it effected the parties' interest, especially the accused' interest in terms of getting a fair trial.

Once the accused is able to point out the serious prejudice beat of the substantive or the procedural law then he can of course seek a benefit saying that the fair trial standards have not been met. It may not be possible for us to say with exactitude that what the exact standard could be, it has to be contingent on the fact plus circumstances of every case. It is worth mentioning that the start of a fair trial is not from lodging FIR against the accused person, rather it come into operation as soon as the state machinery moves and effects the position of the concerned person. The norms of the fair trial are necessarily being observed with the start of investigation and include trial procedure and appeals. Pre and post-trial stages are interconnected in a sense that a mistake on one stage may directly or indirectly affect the other stage. In this regard the stages or fair trial is divided into three categories for the purpose to identify the relevant issues.

Pre – Trial Rights

Equality before the law of all parties is one such thing and when we discuss parties to criminal justice administration process, we are not just

talking about the accused, we are talking about everybody having access to courts, tribunal and having access to the administration system.

**Elements that are to be ensured to have a Fair Trial satisfaction;
Right against Arbitrary Arrest/ Detention**

The rights to have liberty of security of a person is protected under International Human Rights Instruments, the liberty of person includes bodily movements which is restricted by detention.⁹ While security of person covers an interference free private life. This interference is only subject to the law and under the established procedure.¹⁰

Right to know the Reason of Arrest

This is also a norm of the fair trial that at the time of arrest reasons should be provided and the person must be informed about the charges and about the fact that why he has been arrested. Similarly, satisfactory evidence is needed in-order to challenge the allegations at the time of his custody. All these opportunities must be given to the accused person under reasonable circumstances and in understandable language,¹¹ this right is extended to all the pre-trial stages.

Right to have a Legal Counsel

This is one of the most debated and frequently violated right of the fair trial. It is observed by the lawyers that at this stage free choice should be given to the accused person to hire the counsel of his own choice. This right is worth of High importance for the preparation of defence. Focus is given on the point that the people arrested must be given a fair opportunity with in reasonable time to communicate with their legal counsel without delay.¹²

- a) Right to have your dispute heard by an Independent, competent and impartial tribunal. By a competent tribunal we mean that a tribunal which has the capacity to come up with a binding decision. The judges must be independent and impartial.¹³ It's not just the courts of law we talk about the requirements to comply with the fair trial standards, it also requires from the Military Tribunals , religious courts and the traditional courts¹⁴ also being asked to comply with the fair trial standards. This standard has to be adhered to right from the inception to the aspect of final decision. One point again must be kept in trial that during trial there must be no unnecessary

interference, which may impact the prosecution, public interest or which may impact the accused. We generally hear that what impact it has on the accused, but there are various other impacts which it might have. When we talk about impartiality, that again requires a kind of balancing that is to be done between the accused to be dealt fairly, the victim right to ensure that the trial is fair to get him justice, the witnesses has a fair role to be played in the entire process and in all these cases one of major debates with regard to media access to trials whether that effects the impartiality and the decision making process, that is a debate at the subject as such.¹⁵

- b) Public Hearing: which is again is a facet of fair trial. A public hearing requires that the entire process is open to the public scrutiny, which ensures that fairness is there right from the beginning till the end.¹⁶ The presence of media to that extent ensures that transparency is communicated to the public at large.¹⁷ There are different standards which are to be applied in assessing as to whether a public hearing to be ensured at all cost or there are instances where a public hearing should be deviated from, that has to done on the principles of necessity and proportionality.¹⁸ There are deferent grounds which may be insisted upon avoiding the public hearings. They may be in terms of Moral, public interests, nationwide sanctuary, secluded life of the party and of course public interest may sometimes require that proceedings are conducted in camera in certain circumstances, publicity may be detrimental as to the parties.
- c) Presumption of Innocence: when we talk about the presumption of innocence in a criminal justice system we are talking about that in proving the guilt being there, the standards being such that is to be proved beyond reasonable doubt.¹⁹ Similarly the accused person is entitled to all kinds of fairness in terms of investigation as well as trial and the conviction and post-conviction stages too.²⁰ The entire process should be conducted in a manner which balances the rights of the citizens guaranteed under the constitution on one hand and as to how the stat's police part is there to ensure the maintenance of the administration.²¹
- d) Privilege against Self-Incrimination: this can extend to the testimony of the accused to the Court in terms to compel him to produce evidence, allowing evidences to be collected, legal

compulsions to answer the questions, adverse inferences being drawn from his silence. There may be coercion of different kinds including psychological coercions as such to answer the questions or to confess the guilt etc., all these are part of self-incrimination and violations.²² The reliability of scientific evidence is being in the news, whether it can be use, how far it can be use, and if it is already used, what is its evidentiary value, to which state of the proceeding it must be confined and safeguards must be placed to guarantee that the rights of the accused to be fairly dealt and not violated. The Equality of Arms, as mentioned earlier is something which ensures minimum guarantees especially for the accused that he is informed of the accusations against him that he can put up an effective defence.²³ It is also necessary that the charges must be specific against him, it requires procedural equality in terms of presenting case, maintain the adversarial nature of the proceedings, to be able to hiring a council, instructing his council effectively and having adequate time and facilities to come up with proper defence preparation.²⁴ By the right council we mean an effective council which of real importance to uphold the rule of law. Similarly the council must be a competent council and where the accuse person fails in providing or hiring a council the state is under obligation to provide him an effective and competent council to defend his case.

- e) Speedy Trial is also considered as a facet of fair trial, because hearing without undue delay is an integral part of fair trial.²⁵ But this point must be considered that a delayed trial is not always be an unfair trial especially where the reasons are provided for such delay, and whether any prejudice is caused to the accused in result of such delay.²⁶ A speedy trial is not only in the interest of the accused but it is in the interest of the parties to have speedy solution of their disputes.
- f) Right to be heard: this right gives opportunity to the accused to bring his view to the Court and is closely related to defend oneself; it may be through self-representation and through the council of his choice. It may include calling and examination of witnesses including expert witnesses.²⁷ The accused person also has the right to cross examine. Two parties who are generally not considered very prominently till late time were the victims and the witnesses. The importance of the parties in the trial process cannot be ignored,

people whose interests to be taken care of; they need effective protection and participation of the witnesses and victims.²⁸ The witnesses should not be subjected to intimidation, witness protection is required. Apart from this we have the aspect of victim getting justice, assessment and fairly behaviour including the remedies of reimbursement or recompense which is covered under the concept of Fair Trial. The concept of legality, the principles of legality which are required thereto these are Double Jeopardy, Ex Post Facto Loras and the fact to how severe penalty cannot be imposed on crime if the penalty prescription has been changed later to the commission of the act which amounts to the crime. The benefit is given to the party which commit the crime.

Post- Trial Right in Fair Trial

- a) Post- Conviction: the punishment and the treatment that is given should not be cruel, degrading or inhuman; it becomes the duty of the courts to uphold the due process whenever a statute Prima Facie looks like invading the same.²⁹ There is the right to the public that they should have timely judgments.
- b) Everyone who is sentenced for a crime has the right to review by the upper Court or tribunal as per legal directions, and that review should be genuine.³⁰

Trial Observations

Despite the fact that considerable attempts are made by the international as well as local Non-Governmental Organizations a few decades ago, but they failed to come out with an effective and comprehensive monitoring mechanism, that how a fair trial should be observed. Indeed it is very difficult to develop such norms as trial conditions vary from place to place and case to case. There is a need of flexibility to respond a situation which the observers are likely to face with. This would be correct to say that there are no basic directions for the observers; the section is based on the trials monitoring practices which is applied and developed by various Organizations coupled with experience and expertise in the concerned area.³¹ For a Fair trial observation there are certain points which must be considered, these are;

- ❖ The choice of the Trial
- ❖ To select a trial Observer

- ❖ Communication and informing the Government
- ❖ Briefing
- ❖ Reasonable Translators
- ❖ Travelling and House arrangement
- ❖ Public statement, throughout or even after the completion of the mission
- ❖ Interviews and contacts throughout the task
- ❖ Taking notes in the Courtroom
- ❖ Final report of the Observer

Lastly, there is a serious point to be considered as to whether the report requires Government comments which is sponsored by the NGO prior to make it public. Now these are the matters or polices depend on the circumstances of the case, which involve the focus as well as the purpose of the report and the expected reaction of the Government to it. By examining the statutes of customary international law, it becomes clear that trial observation does not come under its scope, but with the passage of time it is now considered a norm of it.

General Comments

These were the different aspects of fair trial, we must understand that this fair trial concept permits every layer of justice systems and require submission by everybody who is concerned in this processes. It involves every single participant in ensuring that the criminal justice standards are retained for the sake of majesty of law and rule of law. The system which ensures this majesty of law is what commands respect and order in the society that is why we need to understand that the fair trial standards are necessary not just for the sake of accused but the entire society as a whole. As far as the accused is concerned we must understand that he is entitled to a fair trial but he may not exactly get a perfect one according to his choice because there are so many other participants who's interest are supposed to be kept in mind.

In 1985 Declaration of Basic Principles of Justice was adopted by the UN General Assembly for the purpose to safeguard the rights of the people faced with the abuse of power, as well as to secure its recognition over international level. In this regard our state took lazy initiatives, as our courts are of the view that a crime not only affects the individual but

also the society in general. If it is the fact, then the more logical way as to bring about the balance between the rights of victim as well as of the accused person, keeping in view the rights of the society, without prejudices to one another.

Solution of Unjust imprisonment; when something that not what you did, you shouldn't put yourself under pressure, you just relax and be strong to support your truth. You must research about your problem in the logical way if you feel like don't know much about law, you can hire lawyer to help you.

Notes and References:

¹Article 14 of the International Covenant on Civil and Political Rights (ICCPR), 1 which provides that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

²See Draft Third Optional Protocol to the ICCPR, Aiming at Guaranteeing Under All Circumstances the Right to a Fair Trial and a Remedy, Annex I, in: "The Administration of Justice and the Human Rights of Detainees, The Right to a Fair Trial:

³Article 14 of the International Covenant on Civil and Political Rights (ICCPR), 1 which provides that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

⁴See Draft Third Optional Protocol to the ICCPR, Aiming at Guaranteeing Under All Circumstances the Right to a Fair Trial and a Remedy, Annex I, in: "The Administration of Justice and the Human Rights of Detainees, The Right to a Fair Trial: Current Recognition and Measures Necessary for Its Strengthening," Final Report, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 46th Session, E/CN.4/Sub.2/1994/24, June 3, 1994 [hereinafter The Final Report], at-59- (<http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/d8925328e178f8748025673d00599b81?pendulum>).

⁵Criminal Original Petition No. 6 of 2012 in Suo Motu Case No. 4 of 2010 (Contempt proceedings against Syed Yousaf Raza Gillani, the Prime Minister of Pakistan, regarding noncompliance of this Court's order

dated 16.01.2012), decided on 26th April 2012 PLD 2012 SC 553, Para 27.

- ⁶ Kali Ram v State of Himachal Pradesh AIR 1973 SC 2773, Para. 27
- ⁷ Mrs. Maneka Gandhi v. Union of India (UOI) and Anr. (1978) 1 SCC 248, Para. 56.
- ⁸ ICCPR- Article 14, African Charter on Human and People Rights Article 3, 7 and 26, American Convention on Human Rights – Article 8, European Convention on Human Rights Article 3, 6 and 7, Statute of International Criminal Court, International Criminal Tribunal for Rwanda and the former Yugoslavia, Universal Declaration of Human Rights- Articles 5, 9, 10 and 11, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Non- Binding Documents of Relevance, Basic Principles for the Treatment of Prisoners, Standard Minimum Rules for the Treatment of Prisoners Persons under Any Form of Detention or Imprisonment, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Basic Principles for Role of Lawyers, Basic Principles on the Independence of the Judiciary, UN Standard Minimum Rules for the Administration of Juvenile Justice, Code of Conduct for Law Enforcement Officials, Guidelines on the Role of Prosecutors, Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Basic Principles on the Use of Force and Firearm by Law Enforcement Officials, UN Rules for the Protection of Juveniles Deprived of Their Liberty;
- ⁹ Manfred Nowak, *U.N. Covenant on Civil and Political Rights, CCPR Commentary* (N.P. Engel, Arlington: 1993) [hereinafter Nowak Commentary], at 244
- ¹⁰ See also European Convention, *supra* note 8, Article 5(1); African Charter, *supra* note 8, Article 6; American Convention, *supra* note 8, Article 7(1)-(3); and Statute of the International Criminal Court [hereinafter ICC Statute], Article 55(1)(d). The ICC Statute establishes a permanent institution for the purposes of trying persons for the most serious international crimes (including genocide).
- ¹¹ The Human Rights Committee has stated that “all persons who are arrested must immediately have access to counsel.” (Concluding Observations of the Human Rights Committee, Georgia, UN Doc. CCPR/C/79 Add.75, April 1, 1997 para 27) [Hereinafter Concluding Observations of the HRC]. See also the Report of the Special Rapporteur on the

Independence of Judges and Lawyers regarding the Mission of the Special Rapporteur to the United Kingdom, UN Doc E/CN.4/1998/39/Add.4, March 5, 1998, para 47.

- ¹²See Principles on the Role of Lawyers, *supra* note 6, Principle 22 (“Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationships are confidential;” and Body of Principles, *supra* note 6, Principles 15 and 18.
- ¹³ Human Rights Committee, General Comment No. 8, July 27, 1982, [hereinafter General Comment 8], para 2. The European Court has held that to hold a person for four days and six hours violates article 5(3) of the European Convention (*Brogan et al v United Kingdom*, 10/1987/133/184-187, November 29, 1988, para 62). The InterAmerican Commission has held that a week is too long (Inter American Commission Seventh Report on the Situation on Human Rights in Cuba, 1983 OEA Ser L/V/11 61.doc 29 rev 1, at 41).
- ¹⁴ The African Charter makes a special reference to the Traditional Courts
- ¹⁵ The Human Rights Committee held that a Jamaican court violated Article 14(1) by failing to issue a reasoned written judgment (*Hamilton v Jamaica* (377/1989), 29 March 1996, Report of the HRC, vol. II (A/49/40), 1994 at 73.
- ¹⁶*Curme v Jamaica* (377/1989), 29 March 1994, Report of the HRC, vol. II (A/49/40), 1994 at 73.
- ¹⁷See also European Convention, *supra* note 8, Article 6(1); American Convention, *supra* note 8, Article 8; and ICC Statute, *supra* note 10, Article 67(1)
- ¹⁸ Vienna Convention on Consular Relations, April 24, 1963, Article 36; Body of Principles, *supra* note 6, Rule 16(2); Standard Minimum Rules, *supra* note 6, Rule 38
- ¹⁹ The Final Report, *supra* note 2, at 76. See also General Comment 13, *supra* note 16, para 7; ICC Statute, *supra* note 10, Article 66
- ²⁰ European Convention, *supra* note 8, Article 6(2); American Convention, *supra* note 8, Article 8(2); African Charter, *supra* note 8, Article 7(1)(b); and ICC Statute, *supra* note 10, Article 66(1).
- ²¹Suo Motu Action Regarding Allegation of Business Deal between Malik Riaz Hussain and Dr Arsalan Iftikhar Attempting to Influence the Judicial

Process in *Suo Motu Case No. 5 of 2012*, decided on 14th June 2012
PLD 2012 SC 664.

- ²² American Convention, *supra* note 8, Articles 8(2)(g) and 8(3); ICC Statute, *supra* note 10, Articles 55(1)(a) (pre-trial) and 67(1)(g).
- ²³ *Ashingdane v. United Kingdom* (1985) 7 E.H.R.R. 528, [1985] E.C.H.R. 8225/78, at para. 57.
- ²⁴ See the prohibition on the use of evidence in Article 15 of the Convention against Torture and Article 10 of the Inter-American Convention on Torture. *See also* General Comment 13, *supra* note 16, para 14. See also the European Court in *Murray v United Kingdom* 41/1994/488/570, 8 February 1996, para 45
- ²⁵ European Convention, *supra* note 8, Article 6(3)(b); American Convention, *supra* note 8, Article 8(2)(c); African Commission Resolution, *supra* note 13, Article 2(E)(1); and ICC Statute, *supra* note 10, Articles 67(1)(b) and 67(2).
- ²⁶ Basic Principles on the Role of Lawyers, *supra* note 6, Principle 21.
- ²⁷ Nowak Commentary, *supra* note 9, at 256 and The Final Report, *supra* note 2, at 71. *See also* *Henry and Douglas v Jamaica* (571/1994), 26 July 1996, UN Doc CCPR/C/57/D/571/1994, para 9.2.
- ²⁸ *Estrella v Uruguay* (74/180) 29 March 1983, at 95 where the Human Rights Committee held that a military court had violated the defendant's right to choose counsel by limiting him to a choice between two appointed attorneys. *See also* Basic Principles on the Role of Lawyers, *supra* note 6, Principle 5.
- ²⁹ Article 4 of Protocol 7 to the European Convention and Article 20 of the ICC Statute. Note that Article 8(4) of the American Convention is different in that the prohibition applies only if the accused has been previously *acquitted*, but then the prohibition is not limited to retrial on the same charge—no charge arising out of the same facts (“the same cause”) may be pursued.
- ³⁰ European Convention, *supra* note 8, Article 2 of Protocol 7; American Convention, *supra* note 8, Article 8(2)(h); and African Commission Resolution, *supra* note 13, para 3.

³¹ Among others, The International Commission of Jurists (ICJ), Amnesty International (AI), The International Federation of Human Rights (FIDH), and The American Bar Association (ABA). This sections also draws heavily on Professor David Weissbrodts's seminal article "International Trial Observers," *Stanford Journal of International Law*, Volume 18, Issue 1, spring 1982.